SINGAPORE REPORTS

GOH GIN CHYE & ANOR. v. PECK TECK KIAN REALTY PTE. LTD.

[C.A. (Kulasekaram, Chua & Rajah JJ.) May 20, 1982]
[Singapore – Civil Appeal No. 65 of 1981]

Practice & Procedure – Landlord & Tenant – Claim for possession against tenant – Failure of appellants to include party in trial below as second respondent – Action dismissed – Appeal – Appeal allowed – Subordinate Courts Rules, 1970, 0.49 r. 1(5) – Control of Rent Act (Cap. 266), s. 15(i) (g).

Landlord & Tenant – Claim for possession – Failure to include party in trial below as second respondent – Effect of.

The respondents, owners of the premises at 71 Kampong Bahru Road, Singapore, sought for possession of the premises against the appellants. They claimed, *inter alia*, that the appellants had sublet the premises in question to one *R.* at the monthly rental in excess of 110% of the reasonable rent of $26 per month under section 15(i) (g) of the Control of Rent Act. *R* was the third defendant in the lower court proceedings.

The learned Senior District Judge held that the relationship between the appellants and *R* was that of a chief tenant and sub-tenant and that all the purported 'licence' agreements were a sham and did not reflect the true relationship between them. Against this judgement the appellants appealed, citing only the respondents as a party to the appeal. *R*, who was a party in the trial below, was not cited as the second respondent.

Lai Kew Chai J. held (see [1982] 1 M.L.J. 117) that *R* was a necessary party as his status and legal rights would be directly affected by any substantive decision in the appeal. The appellants had failed to comply with Order 49 Rule 1(5) of the Subordinate Courts Rules and he dismissed the appeal without deciding on the substantive merits of the appeal.

The appellants appealed against the aforesaid Judgement. They contended that the learned judge had erred in dismissing the appeal from the District Court for want of parties instead of adjourning the matter for an application to be made to join *R* as second respondent and for extension of time to serve the proceedings on the appellants. In allowing the appeal, the Court of Appeal in an oral judgement delivered by Kulasekaram J. made the Order prayed for in the Motion and remitted the matter back to the High Court to complete the hearing of the District Court Appeal.

Cases referred to:

(1) *Purnell* v. *The Great Western Railway Co.* (1876) 1.Q.B.D. 636
(2) *Gatti* v. *Shoosmith* [1939] 3 All E.R. 916

COURT OF APPEAL.

M.Karthigesu (*V.K.S.Narayanan* with him) for the appellants.

Gan Choo Beng for the respondents.

P. Balagopal for *R.*

Cur. Adv. Vult.

Kulasekaram J. (delivering oral judgment of the Court) made the order prayed for in the Motion and remitted the matter back to the High Court to complete the hearing of the District Court appeal.

Order accordingly.

Solicitors: *V.K.S. Narayanan; Gan & Associates; Murugason & Co.*

LIM HOCK KIM v. SIM SENG QUEE

[D.C.A. (Choor Singh J.) April 2, 1980]
[Singapore – District Court Appeal No. 46 of 1979]

Land Law – Claim for vacant possession – Erection of houses on land – Whether by express or implied consent of landlord – Whether equity could intervene.

Landlord & Tenant – Claim for vacant possession of land – Erection of houses by tenant – Whether tenancy coupled with equity – Whether landlord estopped from recovering possession of land.

This was an appeal against the judgement of the learned Senior District Judge who allowed the plaintiff's claim for vacant possession of the land occupied by the defendant. The facts revealed that the defendant was let into the land which was then vacant in 1957 as a ground tenant at a monthly rent of $91.50. A Notice to Quit dated April 7, 1975 was served on April 9, 1975 purportedly determining the tenancy from May 31, 1975. At some time after the defendant was let into the land, he constructed five small wooden houses on the land. He sold four of them and granted the purchasers 30 year leases of the land on which the houses stood. In those leases the defendant described himself as 'owner' of the land. He retained possession of one of the said five houses together with the land on which it stood and which was the subject matter of the suit.

The defendant claimed that he was induced to believe that he could build on the said land and to occupy it for as long as he wished so long as the monthly ground rent was paid. He contended that the plaintiff was therefore estopped from recovering possession of the land in question.

Held, dismissing the appeal: there was no evidence of any express or implied consent given for the erection of the houses nor was there any evidence of inducement or encouragement by the landlord. There were no grounds for equity to intervene.

Editorial Note: The appellant/defendant's appeal against the above decision was dismissed by the Court of Appeal (Wee Chong Jin C.J., Kulasekaram and Rajah JJ.) in C.A. 37/80 on August 5, 1980. There was no written judgment.

Cases referred to:–

(1) *Ramsden* v. *Dyson* (1866) L.R. 1 H.L. 129.
(2) *Khew Ah Bah* v. *Hong Ah Mye* [1971] 2 M.L.J. 86.
(3) *Wee Kang Whye* v. *Lee Woon Tong* [1974] 1 M.L.J. 7.

DISTRICT COURT APPEAL.

N. Ganesan for the appellant.
Cheng Tim Pin for the respondent.

Cur. Adv. Vult.

Choor Singh J.: This was an appeal from the judgment of the learned Senior District Judge, Mr. Michael Khoo Kah Lip, who allowed the plaintiff's claim for vacant possession of the land occupied by the defendant.

The facts are these. The defendant was let into the land which was then vacant in 1957 as a ground tenant on a month to month ground rent of $91.50 p.m. A notice to quit dated April 7, 1975 was served on the April 9, 1975 purportedly determining the tenancy from May 31, 1975. The provisions of the Control of Rent Act do not apply to the land in question.

At some time after the defendant was let into the land he constructed five small wooden houses on the land. He sold four of them and granted the purchasers 30 year leases of the land on which the houses stood. In those leases the defendant described himself as 'owner' of the land. The defendant has retained possession of one of the five houses together with the land on which it stands and that is the subject matter of this case.

It was alleged by the defendant that the five wooden houses were built between 1959 and 1960 and that the plaintiff's predecessor in title was fully aware that the defendant was proceeding to build them and 'expressly and/or impliedly consented to the same'. The plaintiff's predecessor in title was his father, Sim Khong. It was further alleged that the defendant was induced to believe that he 'could build on the said land and to occupy the said land for as long as the defendant wished so long as monthly ground rent was paid'.

In short, the defendant claimed that his tenancy was coupled with an equity and that the plaintiff was estopped from recovering possession of the land in question.

The defendant relied on the decisions in *Ramsden* v. *Dyson*[1], *Khew Ah Bah* v. *Hong Ah Mye*[2], and *Wee Kang Whye* v. *Lee Woon Tong*[3], These cases show that if a landlord allows his tenant to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, the tenant has a tenancy coupled with an equity. The landlord is thus precluded from recovering possession of his land by merely terminating his tenancy; he must also satisfy the equity.

The burden of proof was on the defendant. The learned Senior District Judge clearly rejected the contention of the defendant that Sim Khong stood idly by whilst the defendant erected the houses on his land. Having heard all the evidence and the submissions made, he made the following finding:

> "Having regard to all the facts in this case, I am not satisfied that there is evidence that the landlord had encouraged or induced the defendant to build the houses, or that there was any expectation held out by him to the defendant on the strength of which the defendant expended money on the land. No evidence has been forthcoming to show conduct on the part of Sim Khong which induced the defendant to build the houses in the belief that rights in perpetuity would thereby be acquired. No equity has been shown to arise from the expenditure of money by the defendant . . ."

In *Wee Kang Whye's* case *(supra)* I stated, at page 9:

> ". . . For equity to intervene there must be evidence of some inducement or encouragement by the landlord or some expectation held out by him to the tenant on the strength of which the tenant expended money on the land . . ."

There was no such evidence in this case. There was no evidence of any express or implied consent given for the erection of the houses nor was there any evidence of inducement or encouragement by the landlord. There were no grounds at all for equity to intervene on behalf of the defendant.

In my judgment, the defendant was not entitled to any equitable relief and the learned Senior District Judge came to a correct decision in allowing the plaintiff's claim for vacant possession of the land occupied by the defendant.

Appeal dismissed

Solicitors: *Ganesan, Carlose & Partners; Yap & Yap.*